

One-rdg. _____
P. Hrngs. _____
Pgs. 11
Filed: 04-12-16

Sponsored by: Fisk

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2016- 084

SPECIAL ORDINANCE NO. _____

AN ORDINANCE

1 AUTHORIZING the City Manager, or his designee, to enter into a contract with Texas
2 A & M Engineering Extension Service (TEEX) to teach a course for the
3 Springfield Police Department.
4 _____
5

6 WHEREAS, TEEX is a political subdivision of the state of Texas; and
7

8 WHEREAS, pursuant to Section 70.220 of the Revised Statutes of the state of
9 Missouri, this agreement must be approved by City Council.

10
11 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
12 SPRINGFIELD, MISSOURI, as follows, that:

13
14 Section 1 –The City Manager, or his designee, is hereby authorized to enter into
15 a contract with Texas A & M; said agreement to be in substantially the form as that
16 document attached hereto and incorporated herein by reference as "Attachment 1."
17

18 Section 2 –This ordinance shall be in full force and effect from and after passage.
19
20

21 Passed at meeting: _____
22
23

24 _____
25 Mayor
26
27

28 Attest: _____, City Clerk
29
30

31 Filed as Ordinance: _____
32
33

34 Approved as to form: Amanda R. Callaway, Assistant City Attorney
35
36
37 Approved for Council action: Greg Burt, City Manager

EXPLANATION TO COUNCIL BILL NO: 2016- 084

FILED: 04-12-16

ORIGINATING DEPARTMENT: Police

PURPOSE: To authorize the City Manager, or his designee, to enter into a contract with Texas A & M Engineering Extension Service (TEEX), to teach a course for the Springfield Police Department.

BACKGROUND: Texas A & M University, through the university's Engineering Extension Services offered to present a three day "First Line Supervisor Course." Participants will learn topics in ethics, effective communication, leadership styles, counseling, planning and organizing and cultural diversity. The course will be presented at the Springfield Police and Fire Training Facility in 2016. TEEX will provide the instructors, course materials for each registered course participant, and all transportation and lodging for the instructors.

Pursuant to Missouri Revised Statutes Section 70.220, this agreement must be approved by City Council due to Texas A & M University being a political subdivision of Texas.

REMARKS: The total cost to the City is \$7,250.00.

Submitted by:



Paul Williams, Chief of Police

Approved by:



Greg Burris, City Manager

Attachment 1

ROUTING ORDER	(1) ORIGINATING DEPARTMENT	(2) CONTRACTOR	(3) FINANCE DEPARTMENT
	(4) LAW DEPARTMENT	(5) CITY MANAGER'S OFFICE	(6) CITY CLERK'S OFFICE
EFFECTIVE DATE	TERMINATION DATE	CONTRACT NUMBER:	
(X) NEW CONTRACT		() RENEWAL OF CONTRACT NO. _____	
CITY		CONTRACTOR	
CITY OF SPRINGFIELD 840 BOONVILLE, P.O. Box 8368 SPRINGFIELD, MO 65802		Name: Texas A&M Engineering Extension Service Address: P.O. Box 40006 College Station, TX 77842-4006	
Attention: Cpl. J.A. (Tony) Smith		Attention: Larry Frye	
Department: Springfield Police Dept – Training Unit		Phone: 979-458-3547	
Phone: 417-864-1788	Fax: 417-864-1352	Fax: 979-862-2788	

SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by the parties identified above.

WITNESSETH:

THAT, WHEREAS, the City of Springfield desires to engage the Contractor to render certain technical and professional services hereafter described in connection with a project more particularly described in **Exhibit A**; and

WHEREAS, the Contractor made certain representations and statements to the City with respect to the provision of such services and the City has accepted said proposal;

NOW, THEREFORE, for the considerations herein expressed, it is agreed by and between the City and the Contractor as follows:

1. **Services.** The City agrees to engage the services of the Contractor and the Contractor agrees to perform the services hereinafter set forth in connection with projects described in **Exhibit A** in accordance with the standard of care, skill and expertise ordinarily used by other members of Contractor's profession in performing similar services.

2. **Addition to Services.** The City may add to the Contractor services or delete therefrom activities of a similar nature to those set forth in **Exhibit A**, provided that the total cost of such work does not exceed the total cost allowance as specified in Paragraph 6 hereof. The Contractor shall undertake such changed activities only upon the direction of the City. All such directives and changes shall be in written form and prepared and approved by the office of the City Manager and shall be accepted and countersigned by the Contractor.

3. **Exchange of Data.** All information, data, and reports in the City's possession and necessary for the carrying out of the work, shall be furnished to the Contractor without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of services.

4. **Personnel.** The Contractor represents that Contractor will secure at Contractor's own expense, all personnel required to perform the services called for under this contract by Contractor. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Contractor. All of the services required hereunder will be performed by the Contractor or under Contractor's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.

5. **Term.** The services of the Contractor shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in

the light of the purposes of the contract, but in any event, all of the services required hereunder shall be completed as set forth in the schedule for the project which is attached hereto as **Exhibit A**.

6. **Costs not to Exceed.** The City of Springfield is limited by law with respect to the amount of money it can pay. Therefore, the City has established a fixed sum for this contract which cannot be exceeded unless this contract is amended. The Contractor providing services hereunder shall be required to keep track of the amount of hours billable under this contract at all times; and any work in excess of the fixed sum shall not be eligible for payment. The Contractor shall notify the City if Contractor anticipates that the contract amount may be exceeded, in order to determine whether or not the City is prepared to increase the total compensation. The Contractor shall establish a billing system showing the amount of money remaining on the contract which shall be shown in each monthly billing.

7. **Payment.**

a. **Conditioned upon acceptable performance.** Provided Contractor performs the services in the manner set forth in paragraph 1 hereof, the City agrees to pay the Contractor in accordance with the terms set forth in **Exhibit A**, which shall constitute complete compensation for all services to be rendered under this contract; provided, that where payments are to be made periodically to Contractor for services rendered under this contract, the City expressly reserves the right to disapprove in whole or in part a request for payment where the services rendered during the period for which payment is claimed are not performed in a timely and satisfactory manner in accordance with the schedule and description of services set forth in **Exhibit A**.

b. **Total compensation not to exceed.** It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Contractor under the terms of this contract exceed the sum of **Seven Thousand Two Hundred and Fifty Dollars (\$ 7,250.00)**.

8. **Termination of Contract.**

a. **Termination for breach.** Failure of the Contractor to fulfill Contractor's obligations under this contract in a timely and satisfactory manner in accordance with the schedule and description of services set forth in **Exhibit A** shall constitute a breach of the contract, and the City shall thereupon have the right to immediately terminate the contract. The City shall give written notice of termination to the Contractor by one of three different means: Facsimile Transmission ("FAX") if Contractor has a FAX number; U.S. Postal Service Mails; or by hand delivering a copy of the same to the Contractor; or may give notice by any combination of the above methods. The date of termination shall be the date upon which notice of termination is hand delivered to Contractor or given by FAX, or the third day following mailing of the notice of termination, whichever first occurs. In the event of termination for breach, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the Contractor under this contract shall at the option of the City become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials; provided, that the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the contract by the Contractor.

b. **Termination for Convenience.** The City shall have the right at anytime by written notice to Contractor to terminate and cancel this contract, without cause, for the convenience of the City, and Contractor shall immediately stop work. In such event City shall not be liable to Contractor except for payment for actual work performed prior to such notice in an amount proportionate to the completed contract price and for the actual costs of preparations made by Contractor for the performance of the cancelled portions of the contract, including a reasonable allowance of profit applicable to the actual work performed and such preparations. Anticipatory profits and consequential damages shall not be recoverable by Contractor.

9. **Conflicts.** No salaried officer or employee of the City, and no member of the City Council shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Any federal regulations, and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this contract. The Contractor further covenants that in the performance of this contract no person having such interest shall be employed.

10. **Assignment.** The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto. Provided, however, that claims for money due or to become due to the Contractor from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement, though City will attempt to so notify any such assignee.

11. **Confidentiality of Documents.** Any reports, data, design or similar information given to or prepared or assembled by the Contractor under this contract which the City requests to be kept as confidential shall not be made available to any individual or organization by the Contractor without prior written approval of the City.

12. **Discrimination.** The Contractor agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

a. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

b. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

13. **Occupational License:** The Contractor shall obtain and maintain an occupational license with the City of Springfield, Missouri, if required by city code and any required state or federal license. The cost for this occupational license shall be borne by the Contractor. No contract will be executed by the City until this occupational license has been obtained.

14. **Compliance with Laws.** Contractor agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Contractor affirmatively states that payment of all local, state, and federal taxes and assessments owed by Contractor is current.

15. **Affidavit for Contracts Over \$5,000.00.** That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, if this contract exceeds the amount of \$5,000.00 and Contractor is associated with a business entity, Contractor shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Contractor must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

16. **Nonresident/Foreign Contractors.** The Contractor shall procure and maintain during the life of this contract:

a. If the Contractor is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 RSMo.

b. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

17. **General Independent Contractor Clause.** This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Contractor will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal

Revenue Code, Missouri revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. The Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

18. **City Benefits.** The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

19. **Liability and Indemnity.** The parties mutually agree to the following:

- a. To the extent not covered by sovereign, governmental, or official immunity under Federal, State or Municipal Law or Regulation, each party to this agreement shall be responsible for its own actions in providing services and/or products under this agreement and shall not be liable for any civil liability that may arise from the furnishing of services and/or products by the other party. This language is not intended to act as a waiver or limitation on either party's rights and/or defenses with regard to sovereign, governmental, or official immunity under Federal, State or Municipal Law or Regulation.

20. **Notices.** All notices required or permitted hereinunder and required to be in writing may be given by FAX or by first class mail addressed to City and Contractor at the addresses shown above. The date of delivery of any notice given by mail shall be the date falling on the third day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

21. **Entire Agreement.** This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

[Remainder of Page Intentionally Blank.]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

CERTIFICATE OF DIRECTOR OF FINANCE

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefor.

Mary Mannix-Decker, Director of Finance

APPROVED AS TO FORM

Assistant City Attorney

CONTRACTOR:

By: _____

Name & Title: R. Charles Todd, Associate Agency Director/CFO

CITY OF SPRINGFIELD, MISSOURI

By: _____
Collin Quigley, Assistant City Manager

Exhibit A to Services Agreement**Scope of Work**

Name of Contractor	Texas A & M Engineering Extension Service (TEEX)	
Scope of Work (Job Description)	<p>Texas A & M Engineering Extension Service (TEEX) agrees to provide a three (3) day First Line Supervisor (LET 585) Course. The maximum number of participants for the course will be twenty five (25). The course will be taught at the Springfield Police and Fire Training Facility, located at 2620 W. Battlefield Springfield, Mo. TEEX shall provide the instructors to teach the First Line Supervisor Course. TEEX shall provide all necessary arrangements pertaining to the instructors including but not limited to transportation and lodging. TEEX shall provide each registered course participant with course reference materials.</p> <p>Should the City of Springfield, Mo (City) not fill all twenty five (25) seats for the course, the City retains the option of filling any remaining seats by selling those seats to outside agencies. The City will retain any revenue collected for those seats.</p>	
Date	Course to be held between the dates of May 2, 2016 through December 31, 2016	
Interim Deadlines (if applicable)	Date	Phase of Project To Be Completed
Final Completion Deadline	December 31, 2016	
Reimbursable Expenses	<input checked="" type="checkbox"/> None <input type="checkbox"/> Travel, Lodging, Meals, Phone Calls, Copying, Postage	
Maximum Payment	\$ 7,250.00	Maximum Payment for Services Rendered
	\$ N/A	Maximum Amount Of Expenses To Be Reimbursed
	\$ 7,250.00	Total Maximum Amount To Be Paid To Contractor
Method of Payment	<input checked="" type="checkbox"/> Lump Sum Of Entire Amount Upon Satisfactory Completion of Project <input type="checkbox"/> Monthly Payments Based On Rate of \$ _____ Per Hour <input type="checkbox"/> Incremental Payments As Follows:	
City Official To Approve Payment(s)	Chief Williams	
Department Head's Signature	Date:	

Texas A&M Engineering Extension Service - TEEX Addendum to Customer's Contract

Customer **City of Springfield, MO**
Name: **Springfield Police Dept** ("Customer") **Date:** _____

8400 Boonville ; PO Box 8368, Springfield, MO 65802

Texas A&M Engineering Extension Service ("TEEX") and the **Customer** are this day entering into a contract and, for their mutual convenience, the parties are using the standard contract and/or purchase order form provided by the **Customer** (referred to hereafter as the "**Customer's Contract Form**").

This Addendum ("**Addendum**"), duly executed by the parties, is incorporated into the **Customer's Contract Form** dated _____ and made an integral part thereof. This Addendum and the **Customer's Contract Form** shall be referred to hereafter collectively as the "**Agreement**."

The **Customer's Contract Form** is, with the exceptions noted herein, generally acceptable to TEEX. Nonetheless, because certain standard clauses that may appear in the **Customer's Contract Form** cannot be accepted by TEEX because of its status as an agency of the State of Texas and in consideration for the convenience of using provisions in the **Customer's Contract Form** instead of negotiating a separate contract document, the parties agree that none of the provisions listed below, if they appear in the **Customer's Contract Form**, shall have any effect or be enforceable against TEEX:

1. Requiring TEEX to maintain any type of insurance either for TEEX's benefit or for the **Customer's** benefit.
2. Renewing or extending the Agreement beyond the contract term or automatically continuing the contract period from term to term.
3. Requiring or stating the terms of the **Customer's Contract Form** shall prevail over the terms of the purchase order or this Addendum in the event of conflict.
4. Requiring any total or partial compensation or payment for lost profit or liquidated damages by TEEX if the Agreement is terminated before the end of the contract term.
5. Changing the time period within which claims can be made or actions can be brought under the laws of the State of Texas.
6. Binding TEEX to any arbitration provision or to the decision of any arbitration board, commission, panel or other entity.
7. Obligating TEEX to pay costs of collection or attorneys' fees.
8. Requiring TEEX to provide warranties.

Miscellaneous Provisions:

Alternative Dispute Resolution: The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the **Customer** and TEEX to attempt to resolve any claim for breach of contract made by the **Customer** that cannot be resolved in the ordinary course of business. The **Customer** shall submit written notice of a claim of breach of contract under this Chapter to the Deputy Director of TEEX, who shall examine the **Customer's** claim and any counterclaim and negotiate with the **Customer** in an effort to resolve the claim.

Loss of Funding: Performance by TEEX under the Agreement may be dependent upon the appropriation and allotment of funds from federally-funded programs and/or by the Texas State Legislature (the "Legislature"). In the event a curtailment of federally-funded programs occurs, or in the event state appropriations are unavailable, then TEEX will issue written notice to the **Customer** and TEEX may terminate the Agreement without further duty or obligation hereunder. The **Customer** acknowledges that appropriation of funds is beyond the control of TEEX.

Non-Waiver: The **Customer** expressly acknowledges TEEX is an agency of the State of Texas and nothing in the Agreement will be construed as a waiver or relinquishment by TEEX of its right to claim such exemptions, privileges, and immunities as may be provided by law.

Confidentiality: **Customer** acknowledges that TEEX is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement.

Force Majeure: Neither party is required to perform any term, condition, or covenant of the Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

Entire Agreement: This Addendum and the **Customer's Contract Form** constitute the entire Agreement between the parties and may not be waived or modified except by a written agreement signed by the parties.

Savings Clause: If a court of competent jurisdiction finds any provision of this Addendum and the **Customer's Contract Form** illegal, ineffective or beyond contractual authority of either party, then the offending provision will be stricken and the remainder of the agreement between the parties will remain in effect.

To the extent the language in this Addendum is in conflict with any language in the Customer's Contract Form, the language in this Addendum will control.

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed, intending thereby to be legally bound.

City of Springfield, MO:

By: _____

Name: _____

Title: _____

Date: _____

Texas A&M Engineering Extension Service:

By: _____

Name: R. Charles Todd

Title: Associate Agency Director/CFO

Date: _____